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OFFICE OF PETITIONS

In re Application of :
Ong et al. :
Application No. 10/803,752 : DECISION ON PETITION
Filed: March 18, 2004 :
Attorney Docket No. E04-1015 :

This is a decision on the "PETITION" filed June 16, 2004, requesting that a filing date of March 18, 2004 be accorded to the above-identified application.

Application papers in the above-identified application were deposited on March 18, 2004. However, on June 3, 2004, the Initial Patent Examination Division mailed applicants a "Notice of Incomplete Nonprovisional Application," stating that the application papers deposited March 18, 2004 had not been accorded a filing date because the application was deposited without drawings.

In response, applicants filed the instant petition. Applicants acknowledge that the application as filed did not include drawings. Petitioner states that due to inadvertent clerical error, one page of drawings must have become jammed in the copy machine and as a result the one sheet of drawing was not properly submitted to the PTO. In support thereof, petitioner submitted an affidavit of the clerical employee Debra Mengel attesting to the inadvertent omission of drawing.

RELEVANT STATUTES AND REGULATIONS

35 U.S.C. 111(a)(4) provides that:

The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.

However, as stated in MPEP 601.01(f)

It has been USPTO practice to treat an application that contains at least one process or method claim as an

application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

In regards to withdrawing the Notice, MPEP § 601.01(f) also states that:

a nonprovisional application having at least one claim ..., directed to subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description.

And, MPEP § 601.01(g) further provides that:

If the application is filed without all of the drawing figure(s) referred to in the specification, ..., OIPE will mail a "Notice of Omitted Item(s)" indicating that the application papers so deposited have been accorded a filing date, but are lacking some of the figures of the drawings described in the specification.

DISCUSSION

Applicants acknowledge that the application as filed did not contain drawings. Application papers not present in the application on the filing date cannot be considered a part of the original application papers.

Nonetheless, the application is entitled to a filing date. A review of the application confirms that as filed it contained at least one method claim. Pursuant to § 601.01(f), a drawing is not considered essential for a filing date. Thus, the application is entitled to a filing date without drawings present in the application.

However, as the specification in the instant nonprovisional application contained reference to drawing figures 1 and 2 (Brief Description of Drawings, p. 4 of Specification), mailing of a Notice requiring submission of those figures was appropriate. The Office should have mailed a "Notice of Omitted Items" rather than a "Notice of Incomplete Nonprovisional Application." The "Notice of Incomplete Nonprovisional Application" mailed June 3, 2004, was mailed in error and is hereby **withdrawn**.

In view thereof, the application as originally deposited without drawings is entitled to a filing date of March 18, 2004.

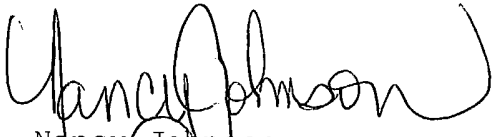
CONCLUSION

To the extent that the petition requests that the application as originally filed, without drawings, be accorded a filing date of March 18, 2004, the petition pursuant to § 1.53 is **GRANTED**.

Given the basis for granting the petition, the petition fee is subject to refund. Accordingly, the petition fee will not be charged to petitioner's Deposit Account.

The Office of Initial Patent Examination (OIPE) has been advised of this decision. Pursuant to this decision, the application has been referred to OIPE for further processing with a filing date of March 18, 2004 and for indication in Office records, as appropriate, that "0" sheets of drawings were present on filing.

Telephone inquiries specific to this decision may be directed to the undersigned at (703) 305-0309.



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